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In the Supreme Court
OF THE
United States

Supreme Court, U.S.
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OCTOBER TERM, 1948

No. 345

RAY G. HOUSTON, as and constituting the County Treasurer of Sacramento County, State of California, and Ex-officio Trustee of Reclamation District No. 1000,
Petitioner,

vs.

THOMAS McCORMACK and GEORGE J. MEISTER, and T. B. SILLS, as and constituting the Board of Trustees of Reclamation District No. 1000 (a public corporation),
Respondents.

PETITION FOR WRIT OF CERTIORARI
to the District Court of Appeal, State of California, Third Appellate District
and
BRIEF IN SUPPORT OF PETITION.

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No.

RAY G. HOUSTON, as and constituting the County Treasurer of Sacramento County, State of California, and Ex-officio Trustee of Reclamation District No. 1000,

Petitioner,

vs.

THOMAS MCCORMACK and GEORGE J. MEISTER, and T. B. SILLS, as and constituting the Board of Trustees of Reclamation District No. 1000 (a public corporation),

Respondents.

PETITION FOR WRIT OF CERTIORARI to the District Court of Appeal, State of California, Third Appellate District.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Your Petitioner respectfully shows:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Mandate was sought in the state court by Respondents, as the governing board of Reclamation District No. 1000 (herein called the "District"), to compel Petitioner, as the County Treasurer of Sacramento County, California, to dissolve Reserve Funds previously established by the District for the benefit of its bondholders and to transfer moneys from the Reserve Funds to the District for its own uses and purposes (R. 1-91). The Reserve Funds had been lawfully established by the District in 1937 in compliance with one of the conditions precedent prescribed by Reconstruction Finance Corporation,[1] an agency of the United States, to the acceptance of the District's refunding bonds under an R.F.C. refinancing program (R. 12). Prior to the actual delivery of the bonds, and as part and parcel of the bond contract, the District had agreed with R.F.C. to establish and maintain the Reserve Funds so long as its bonds were outstanding and unpaid (R. 7-14). California Political Code Sec. 3480e[2] specifically provided for the creation of a Reserve Fund for the further securing of bonds issued by any reclamation district pursuant to an agreement with the United States, or any department or agency thereof, and further provided

> "• • • The moneys in such reserve fund shall be used for the purpose of paying installments of principal and interest, or either thereof, of any outstanding bonds secured by such assessment or assessments,

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[1]Reconstruction Finance Corporation (15 U.S.C. 1946 Ed. Sec. 601, et seq.) is herein referred to as "R.F.C."

[2]California Political Code, Section 3480e is reprinted in full, Appendix A, pages i to iii.

whenever by reason of delinquencies in the payment of calls or otherwise the amount in the bond fund shall be insufficient to meet such installments of principal and interest, or either thereof, on any January 1st or July 1st, as the case may be. * * *." (Cal. Pol. Code Sec. 3480e.)

This law was in effect at the time of the issuance of the District's Refunding Bonds of 1934 and was incorporated in and became a part of the terms of the bonds at the time of their issuance (R. 12). The bond contract was confirmed by the District's resolution of July 8, 1937 (R. 19, 59-62) establishing the Reserve Funds in accordance with the antecedent agreement entered into between the District and R.F.C. (R. 37-51) pursuant to which the District was refinanced by R.F.C.

Petitioner, as County Treasurer and Trustee of the District, was the duly constituted trustee to hold, preserve, maintain and operate the Reserve Funds for the benefit of the holders of the bonds secured thereby (R. 60-62) and as such trustee held the Reserve Funds intact for approximately nine years after the issuance of the bonds (R. 15-16; 28-29). In 1946, while the bonds were outstanding in the hands of the public, the District adopted a resolution dissolving the Reserve Funds (R. 87). This resolution, constituting the state law subsequently enacted, impaired the obligation of the bond contract in violation of Article I, Section 10 of the Constitution of the United States, upon which Petitioner timely relied (R. 30-31; 33). The state court gave effect to the subsequent law in violation of the Constitution of the United States and ordered the Reserve Funds dissolved (R. 91).

The circumstances under which the Reserve Funds were created as part of the bond contract may be briefly summarized as follows:

The District[3] is an agricultural district created under and pursuant to the laws of the State of California (R. 2) and as such is a public body authorized to receive financial aid under the Emergency Farm Mortgage Act of 1933 in the form of loans from R.F.C. (43 U.S.C. 1946 Ed. 403).[4] The Federal law provides that such loans may be made "* * * through the purchase of securities issued or to be issued by such district * * *." (43 U.S.C. 1946 Ed. 403). Prior to 1934 the District had issued bonds, which, as of July, 1937, aggregated $2,268,344.40 in principal amount (R. 4) plus unpaid interest. Pursuant to a refinancing agreement[5] set forth in a resolution of the R.F.C. dated May 7, 1934 (R. 37-51), the terms of which were accepted by the District by resolution of its Board of Trustees (R. 51), R.F.C. advanced its own funds and purchased in the open market bonds of the District then outstanding in the principal amount of $2,262,044.40 (R. 10). Nearly three years elapsed after the making of the loan agreement before R.F.C. was able to acquire the old bonds of the District. In that period it purchased all but approximately $6,000 principal amount of the District's

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[3]See *Hagar v. Reclamation District* (1883) 111 U.S. 701, 4 S.Ct. 663, 28 L. Ed. 569.

[4]Emergency Farm Mortgage Act of 1933, Section 36, reprinted R. 49-51.

[5]Identical with the refinancing program in *Mason v. Paradise Irrigation District* (1945) 326 U.S. 536, 66 S.Ct. 290, 90 L.Ed. 287, except that R.F.C. was able to buy up substantially all of this District's bonds, at the composition figure, in the open market and thereby dispensed with the necessity of a bankruptcy court decree confirming the plan of reorganization.

outstanding bonds, the owners of which were unknown (R. 10). By May 26, 1937, R.F.C. was ready to close its loan with the District, conditioned upon the District's establishing the agreed Reserve Funds.

R.F.C. is a liquidating corporation with a temporary life, whose assets are to be sold and distributed in the process of winding up its affairs (15 U.S.C. 1946 Ed. 613). The securities it acquired in the making of loans are intended for resale to the public (R. 7). By reason of its nature as a liquidating corporation R.F.C., in the consummation of its loans, has uniformly required marketable securities which are readily salable to the investing public (R. 7). R.F.C. had adopted standard regulations requiring districts obtaining loans to establish reserve funds to secure the bonds issued by them to R.F.C. (R. 6-7).[6] These standard regulations were intended to carry out the Congressional mandate that R.F.C. in the making of its loans should require the borrower to make "• • • *provision for such reasonable reserves as may be approved by the Corporation* • • •" (43 U.S.C. 1946 Ed. 403).[7] This

[6]R.F.C. Circular No. 7 (Revised) August, 1934 and "Standard Memorandum" R. 6-7, which provides in part:

> "The annual budget is the basis on which the yearly assessments shall be levied and must include all expenditures to be made during the year, including an amount sufficient to fully service the new securities. It must also include such amounts as the district may be required to raise that year to apply to the reserve fund to assure payment of principal and interest in bad years. The total of such reserve should equal at least one year's maturity of principal and interest to accrue under the new bonds, and provision should be made for its deposit with a depositary satisfactory to the division chief." (R. 7).

[7]The congressional directive to R.F.C. in the making of loans of Federal funds has been described as "• • • *an injunction to get all the security possible* • • •" *R.F.C. v. McCormick* (C.C.A. 7th) 102 F. (2d) 305, 319.

requirement was incorporated in the loan agreement entered into with this District (R. 6-7, 45) under which the District was required to

> "* * * provide for building up such suitable reserve as may be required by this Corporation for payment of principal and interest in bad years. * * *" (R. 45).

Shortly after the loan agreement was made R.F.C. notified the District that it would be necessary to set up a reserve fund similar to that created in the case of other California Reclamation Districts to which loans had been made (R. 8-9). Accordingly, the District proceeded under the state law to hold a bond election on July 19, 1934 at which its Refunding Bonds of 1934 in the aggregate amount of $1,609,000 were authorized by vote of the landowners (R. 8). Following the election the District by resolution prescribed the form, denomination and maturities of the new bonds and authorized their execution and delivery to R.F.C. (R. 8). The Refunding Bonds of 1934 were divided into two separate divisions—First Division and Second Division—(R. 12-13) because they were respectively secured by two separate assessments levied upon the lands in the District at different times (R. 2) and the Reserve Funds were correspondingly divided into First Division and Second Division Reserve Funds (R. 59-62). However, the new Refunding Bonds of 1934 could not be delivered to R.F.C. (in exchange for the District's then outstanding bonds) until R.F.C. had in fact acquired substantially all of the old bonds of the District. This did not occur until 1937—three years after the loan agreement had been made (R. 9-10).

It had been contemplated at the time the loan was agreed upon that the reserve funds would be created by

escrowing sufficient outstanding bonds of the District then held by R.F.C. which would be otherwise cancelled and discharged in the process of refinancing the District.[8] The principal and interest payments on these escrowed bonds —kept alive for that purpose—would have been deposited in the Reserve Funds in order to create and maintain such Funds (R. 8-10, 11). However, to avoid this cumbersome escrow, the District, prior to the actual delivery of the refunding bonds to R.F.C., arranged for the introduction and passage of state legislation designed to simplify the procedure and to authorize the direct establishment of reserve funds (R. 10-11). The form of this new statute, prior to its introduction in the state legislature, had been submitted to R.F.C. by the District, and was approved by R.F.C. (R. 13). This law was enacted as Section 3480e of the Political Code of the State of California and became effective on June 22, 1937.[9] R.F.C. withheld the final consummation of its refinancing program with the District until it had obtained the District's assurance that Reserve Funds would be created in accordance with the new statute (R. 10-11) pursuant to the provisions of the Loan Agreement under which the District had *agreed* to establish the Reserve Funds (R. 12). In reliance upon the District's contract to create Reserve Funds for the benefit of the Refunding Bonds, the Refunding Bonds of 1934 were actually delivered to R.F.C. *six days after the new legislation became effective,* to wit, on June 28, 1937 (R.

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[8]R.F.C. purchased $2,262,044.40 bonds in the open market. (R. 12) at an actual cost of $1,583,500 (R. 10) or 70¢ on the dollar as contemplated by the refinancing program (R. 39). R.F.C. accordingly held valid District bonds aggregating in par value $678,544.40 in excess of its actual advances which could have been escrowed—in lieu of being cancelled—to create the Reserve Funds.

[9]Reprinted, Appendix A, pages i to iii.

12-13). The District immediately submitted its formal resolution setting up the Reserve Funds to R.F.C. for approval (R. 13), and upon receiving such approval the resolution was adopted by the District, on July 8, 1937 (R. 19, 59-62). This resolution established the bond Reserve Funds and constituted Petitioner the trustee of these funds for the benefit of the holders of the bonds, with the duty to maintain such Reserve Funds intact

> "* * *, so long as any of said 'Refunding Bonds of 1934' shall remain outstanding and unpaid * * *."

(R. 60-62). This resolution further required Petitioner to collect assessments upon the lands in the District whenever it became necessary to replenish the Reserve Funds (R. 61) and further required Petitioner to apply moneys in the Reserve Funds to the payment of bond principal and interest whenever by reason of delinquencies or otherwise the District's funds were insufficient to meet any matured installment of principal or interest on its bonds (R. 61). This resolution was subsequently amended on August 2, 1938 (R. 14) but in no material respect (R. 95). By September, 1939 the District had accumulated $61,109.66 in the Reserve Funds (R. 14) representing moneys collected on assessments on the lands in the District but not paid to bondholders during the period R.F.C. was purchasing the old bonds in the open market (R. 9). By October, 1945 the amount in the Reserve Funds aggregated $74,361.13 all of which was in the hands of Petitioner as County Treasurer in his office in Sacramento, California (R. 29). Between 1939 and 1945 a substantial portion of the Reserve Fund, namely $50,000, had been held on deposit in a special account with the Federal Reserve Bank of San Francisco, at San Francisco and the

balance in the office of the County Treasurer (R. 15-16). Nevertheless it was conceded by all parties that the moneys on deposit in the Bank were considered to be the same as cash in the hands of Petitioner, as County Treasurer (R. 15-16). The deposit of $50,000 in the Bank was subsequently delivered to the Petitioner, as County Treasurer, and upon instructions of the District credited to the Reserve Funds (R. 82-84).

On April 3, 1945, as part of its self-liquidating program, R.F.C. sold the District's Refunding Bonds of 1934 to bona fide purchasers (R. 23) who, in purchasing them from the R.F.C., were induced to rely upon the fact that the Reserve Funds had been so created and were then in existence (R. 16-23). These representations of the District (R. 16) and R.F.C. (R. 22) and the records of Petitioner, as trustee of the bond funds of the District (R. 22-23) confirm the mutual understanding and agreement integrated in the bond contract that the Reserve Funds had been established and would be maintained for the benefit of the Refunding Bonds of 1934 so long as they were outstanding and unpaid. Nearly 18 months later, after the bonds had been outstanding in the hands of the public, Respondents, as and constituting the governing board of the District, on September 26, 1946, adopted a resolution dissolving these funds (R. 29-30, 87-90). Petitioner, as Trustee of the bond Reserve Funds, refused to comply with this resolution (R. 90-91). An original proceeding in mandamus (submitted under California practice upon an agreed statement of case under Sections 1138-40 of the Code of Civil Procedure (R. 1)) was instituted in the District Court of Appeal, Third Appellate District, State of California, by Respondents as the Governing Board of

the District to compel Petitioner to make the requested transfer (R. 1-91). Petitioner raised the jurisdictional question in the initial Petition, basing his refusal to dissolve the Reserve Funds upon the ground that the District's subsequent Resolution of September 26, 1947 (R. 87) impaired the obligation of the contract expressed in the District's bonds to maintain those funds intact so long as the Refunding Bonds of 1934 were outstanding and unpaid and was thus in violation of Section 10, Article I of the Constitution of the United States (R. 31, 33).

The State Court, in its opinion[10] ordered the writ of mandate to issue and in so doing upheld the constitutional validity of this resolution and expressly gave it effect as a law of the State of California enacted subsequent to the issuance of the bonds, notwithstanding the fact that, as contended by Petitioner, it impaired the obligation of the contract expressed in the bonds at the time of their issuance.

It is this holding of the District Court of Appeal of the State of California, that Petitioner respectfully requests this Court to review and reverse as an erroneous decision of a Federal question of substance involving basic issues of fiscal policy between Federal and State Governments, on which a decision of this Court has never been had, and, as shown below in this Petition and Brief, is urgently needed.

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[10]84 Adv. Cal. App. 853, 191 P.(2d) 569, which is reprinted in full in R. 91-104.

II.

STATEMENT OF JURISDICTION.

1. The jurisdiction of this Court is invoked under Sec. 237(b) of the Judicial Code, as amended (26 Stat. 828 (1891), as amended, 26 U.S.C. Sec. 344(b)).

2. The date of the Judgment and Decree to be reviewed is March 31, 1947 (R. 134-146) to which a petition for rehearing was denied by order dated April 30, 1948 (R. 105). A timely petition for rehearing in the Supreme Court of California was denied by that Court on May 27, 1948 (R. 105). The time for filing this Petition was extended to October 20, 1948 (R. 108).

3. The law of the State of California, the validity of which is drawn in question, is the resolution of the Board of Trustees of the District adopted September 26, 1946 (R. 87-90, Appendix C, pages ix to xii).

The jurisdictional statement is more fully set forth at pages 16 to 20 of the Brief in support hereof, which is incorporated herein and by reference made a part of this Petition.

III.

THE QUESTIONS PRESENTED FOR THIS COURT'S DECISION ARE:

1. Whether the District's agreement with R.F.C. to establish and maintain Reserve Funds to secure its Refunding Bonds so long as they remained outstanding and unpaid became integrated in the bond contract upon the issuance of the bonds subject to this agreement and whether the contract so made was impaired in violation

of the Constitution of the United States by a state law subsequently enacted which was given effect and enforced by the State Court.

2. Whether a valid agreement for the benefit of the holders of bonds so long as they remained outstanding and unpaid, which was duly entered into between a Federal lending agency (R.F.C.) as a condition precedent prescribed by Congress to the issuance and delivery to it of bonds of a state agency (District) under a program of Federal refinancing is protected by the Constitution of the United States against impairment by subsequent state law after the bonds have been resold by the Federal agency (R.F.C.) to private owners.

IV.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The District Court of Appeal, Third Appellate District, State of California, has in this case decided a Federal question of substance not heretofore determined by the Supreme Court, or at least has decided it in a way not in accord with applicable decisions of this Court (Supreme Court Rule 38(5)(a)), which involves the important question of the fiscal relationship between State and Federal Governments. (*United States v. Texas*, 314 U.S. 480; 62 S.Ct. 350; 86 L. ed. 356. A valid agreement entered into between a Federal lending agency and a state agency obtaining a loan of Federal funds under conditions fixed by Congress which is made for the benefit of the holders of bonds issued by the state agency to R.F.C. must be enforceable by or on behalf of each subsequent owner and

holder of the bonds to protect and enforce the powers granted by Congress to Federal lending agencies and to carry out the purpose and intent of Federal legislation designed to foster and promote the general welfare of the United States.

2. The decision of the State Court clogs the resale of securities now held by R.F.C. as well as the future refinancing of state agencies by Federal lending agencies contrary to the declared policy of Congress. The Federal statutes require R.F.C. as a Federal lending agency to make loans fully and adequately secured in order to obtain readily marketable securities which can be resold in the open market. The security for such loans necessarily is required for the benefit of the private investors subsequently purchasing the bonds from R.F.C. in the course of its self-liquidating operations in order to assure to such private investors that the bonds are an appropriate medium for private investment.

3. State courts should not be permitted by the simple device of holding that no contract exists to sanction the impairment of the obligation of contracts entered into by Federal lending agencies for the benefit of the holders of bonds acquired by it and the constant surveillance of the Supreme Court is required to protect the constitutional guarantee of Article I, Section 10 of the Constitution of the United States, particularly in the case of contracts negotiated by Federal lending agencies upon which private investors are induced to rely in the re-purchase of securities from Federal agencies.

Wherefore, your petitioner respectfully prays that a writ of certiorari issue under the seal of this Court,

directed to the District Court of Appeal, Third Appellate District, State of California, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said District Court of Appeal had in the case numbered on its docket No. 3 Civ. 7413 to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States; and that the judgment of said District Court of Appeal be reversed by the Court, and for such further relief as to this Court may seem proper.

Dated, San Francisco, California,
October 4, 1948.

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Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

OPINION OF THE COURT BELOW.

The opinion of the District Court of Appeal, Third Appellate District, of the State of California, is reported in 84 Adv. Cal. App. 853; 191 P. (2d) 569, and is reprinted in full in the record (R. 91-104).

II.

JURISDICTION.

A.

THE FEDERAL QUESTION.

The constitutional validity of a law of the State of California, i.e., the resolution of September 26, 1946 adopted by the Board of Trustees of the District was directly drawn in question in the original mandamus proceedings on an agreed statement of facts in the District Court of Appeal of the State of California (R. 1-91). In these proceedings, Petitioner, by writ of mandate, was directed, pursuant to said resolution, to dissolve the Reserve Funds created as security for payment of principal and interest on the Refunding Bonds of 1934 issued by the District (R. 105-106). The refusal of Petitioner to dissolve such Reserve Funds and transfer them to the District was based upon his contention that the resolution impaired the obligation of the bond contract to maintain the Reserve Funds intact so long as the bonds remained outstanding and unpaid. This contention was expressly set forth in the Petition before the State Court as part of the agreed statement of facts upon which the controversy was submitted (R. 30-31; 33) as follows:

> "That the Board of Trustees of said District duly establish the First Division Reserve Fund and the Second Division Reserve Fund, and each of them, for the benefit of the holders of said Refunding Bonds of 1934, so long as the same should be outstanding and unpaid; that said reserve funds cannot be dissolved without the consent of the holders and owners of all said issued and outstanding Refunding Bonds of 1934, without impairing the obligation of

the contract expressed in the proceedings for the issuance of said bonds."

The jurisdictional question appears on the face of the decision of the District Court of Appeal in its statement that:

"Respondent argues • • • that the resolution of the district purporting 'to dissolve' the reserve funds impairs the obligation of the 'bond contract.'" (R. 97)

That Court considered the question of the existence of the contract asserted to be impaired and the extent of the obligations thereunder, as appears from its statement:

"This necessitates a consideration of what the bond contract really is." (R. 97)

It was then held that the Reserve Fund was:

"• • • a mere gratuity which the district is at liberty to discontinue if the rights inherent in the bonds at the time of their issuance are not thereby impaired." (R. 99)

And also that:

"Therefore, even if it were conceded that the bondholders have a right to have reserve funds maintained, it would not follow that their rights would be infringed by the transfer proposed to be made by the trustees." (R. 104)

The resolution of September 26, 1946 was expressly given effect by the District Court of Appeal in its statement:

"It is therefore ordered that a writ of mandate issue directing respondent to transfer from the respective reserve funds of the district, to the respec-

tive bond funds thereof, the amounts set forth in the resolution of the board dated September 26, 1946, * * *." (R. 104)

Whenever it is contended that contract obligations have been impaired in violation of Section 10 of Article I of the Constitution of the United States by a state law enacted subsequent to the contract, and the state court has, either expressly or impliedly, given effect to that law, the questions whether the contract in fact exists, and the nature and extent of its obligations, become Federal questions, which if the constitutional mandate is to be preserved, this Court must accept and decide for itself.

The rule was stated in *Cross Lake Shooting & F. Club v. Louisiana* (1911) 224 U.S. 632; 32 S. Ct. 577; 56 L. Ed. 924 as follows (p. 639 of 224 U.S.):

> "* * * when the state court, either expressly or by necessary implication, gives effect to a subsequent law of the state whereby the obligation of the contract is alleged to be impaired, a Federal question is presented. In such a case it becomes our duty to take jurisdiction and to determine the existence and validity of the contract, what obligations arose from it, and whether they are impaired by the subsequent laws."

The rule was restated by Mr. Justice Roberts in *Indiana Ex Rel. Anderson v. Brand* (1937) 303 U.S. 95; 58 S. Ct. 443; 82 L. Ed. 685 where it is said (p. 100 of 303 U.S.):

> "* * * in order that the constitutional mandate may not become a dead letter, we are bound to decide for ourselves whether a contract was made, what are its terms and conditions, and whether the State has, by later legislation, impaired its obligation."

Every factor indicating the applicability of this rule appears on the face of the opinion rendered by the state court in this controversy.

The legislative acts of a public corporation pursuant to the authority granted by the state of its creation are laws of the state within the meaning of Article I of Section 10 of the Constitution of the United States.

Hamilton v. Regents of the University of California (1934) 293 U.S. 245; 55 S. Ct. 197; 79 L. ed. 343;

John P. King Manufacturing Co. v. City Council of Augusta (1928) 277 U.S. 100; 48 S. Ct. 489; 72 L. ed. 801;

Reinman v. Little Rock (1914) 237 U.S. 171; 35 S. Ct. 511; 59 L. ed. 900;

Northern Pacific Ry. Co. v. Duluth (1907) 208 U.S. 583; 28 S. Ct. 341; 52 L. ed. 630;

Mercantile Trust Co. v. Columbus (1906) 203 U.S. 311; 27 S. Ct. 83; 51 L. ed. 198;

Walla Walla v. Walla Walla Water Co. (1898) 172 U.S. 1; 19 S. Ct. 77; 43 L. ed. 341;

Murray v. Charleston (1877) 96 U.S. 432; 24 L. ed. 760.

A proceeding in mandamus is a suit which the Supreme Court is authorized to review.

Detroit and Mackinack Ry. v. Michigan Railroad Commission (1915) 240 U.S. 564; 36 S. Ct. 424; 60 L. ed. 802.

It is not material that the controversy was submitted on an agreed statement of facts.

Aldrich v. Aetna Insurance Co. (1869) 8 Wall. 491; 19 L. ed. 473.

The Federal question presented herein is substantial by reason of the fact that if the decision of the District Court of Appeal of the State of California is allowed to stand uncorrected, it will serve as a precedent hindering and impeding the carefully prepared procedure of Federal financing of state agencies. Securities of state agencies acquired by Federal lending agencies cannot successfully be remarketed if state courts can be induced to hold that no contract between the issuing body and the bondholders ever existed, or that, after the obligations have been disposed of by the Federal agencies, the issuing body need no longer comply with the conditions originally agreed upon with the Federal agencies for the security of subsequent holders of the obligations. In view of the extent of Federal financing of state agencies by the R.F.C. both past and prospective, the substantiality of the question of impairment of the obligation of the bond contract is manifest. R.F.C. alone, as of March, 1948, held in excess of Seventeen Million Dollars[11] principal amount of bonds and other securities which it acquired from various state agencies refinanced by R.F.C. and other Federal lending agencies.

B.

THE INTEREST OF PETITIONER.

Petitioner, as trustee of the Reserve Funds created for the benefit of the holders of the District's Refunding Bonds of 1934 so long as they remain outstanding and unpaid, has the requisite standing in this Court to challenge the validity of the state law impairing the obligation

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[11] "Municipal Bonds and Other Securities Available for Sale" (R.F.C. Wash. D.C. March, 1948).

of the bond contract. Petitioner's interest is direct and inherent because of his mandatory and legal duty to enforce the state statute, the validity of which has been drawn in question. His interest as a *trustee,* directly involved in the controversy in a representative capacity, transcends that of a public official only generally interested as a public official in the law of his state.

As County Treasurer of Sacramento County, Petitioner is trustee of the bond funds of the District and is required by law to collect assessments upon the lands in the District; to hold the funds so collected as trust funds, and to pay the principal and interest of the District's bonds on their respective maturity dates out of such trust funds (*River Farms Co. v. Gibson* (1935) 4 C. A. (2d) 731, 743 (Cf. pp. 739-742 summarizing the statutory procedure); 42 P. (2d) 95).[12] Petitioner was constituted trustee of the Reserve Funds under the District's resolution of July 8, 1937 (R. 59-62) adopted pursuant to Section 3480e of the California Political Code (Appendix A). The trust continued *"so long as any of said 'Refunding Bonds of 1934' shall remain outstanding and unpaid"* (R. 60). Accordingly, Petitioner has a direct interest to protect the obligation of the contract inherent in the bonds because of his legal obligation to comply with and enforce the law under which the Reserve Funds were created. In *Coleman v. Miller* (1938) 307 U.S. 433; 59 S. Ct. 972; 83 L. ed. 1385, wherein this Court held that members of the Senate of the State of Kansas had a sufficient

[12]The provisions of the State law for the issuance of reclamation district bonds are summarized in *Irvine v. Reclamation District No. 108* (1944) 24 C. (2d) 468; 150 P. (2d) 428 (pp. 477-480 of 24 C. (2d)).

interest to raise constitutional issues on behalf of the citizens of that state, the many cases in which certiorari was granted on petition of state officials seeking to determine the validity of state statutes which they were under a duty to enforce were reviewed[13] and this Court then said:

> "This class of cases in which we have exercised our appellate jurisdiction on the application of state officers may be said to recognize that they have an adequate interest in the controversy by reason of their duty to enforce the state statutes the validity of of which has been drawn in question." (p. 445 of 307 U.S.)

In that case this Court also recognized that when constitutional questions are otherwise properly raised, it is not indispensable that a petitioner for a writ of certiorari show that the operation of the questioned statute will, as to him, result in personal injury. Referring to those cases in which this Court has granted certiorari on the petition of state public officials, it was stated:

> "In none of these cases could it be said that the state officers invoking our jurisdiction were sustaining any 'private damage.'" (p. 445 of 307 U.S.)

In no respect material to the jurisdiction of this Court does the duty of a public official to enforce valid state laws differ from the duty of Petitioner, as trustee of the Reserve Funds, to maintain the funds inviolate by en-

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[13] *Blodgett v. Silberman* (1927) 277 U.S. 1; 48 S.Ct. 410; 72 L.ed. 749; *Boynton v. Hutchinson Gas Co.* (1933) 291 U.S. 656; 54 S.Ct. 457; 78 L.ed. 1048; *Morehead v. New York* (1935) 298 U.S. 507; 56 S.Ct. 918; 80 L.ed. 1347; *Kelly v. Washington* (1937) 302 U.S. 1; 58 S.Ct. 87; 82 L.ed. 3.

forcing the law of California under which they were created. If a public official may invoke the jurisdiction of this Court to determine the validity of state laws by virtue of his duty to enforce them, Petitioner as trustee of these Reserve Funds and by virtue of his duty to enfor the state law establishing the funds, may invoke like jurisdiction to determine the validity of a subsequent state law purporting to dissolve these funds.

Furthermore, Petitioner was recognized in the proceedings in the state court as the officially constituted representative of the bondholders by virtue of his official capacity as trustee of the Reserve Funds of the District and of the bond fund of the District out of which the principal and interest of the bonds were payable:

> "That the Petitioners herein are the real parties in interest in this proceeding and that Respondent is sued herein as a public officer; that the proceedings herein nevertheless affect all taxpayers and the owners of all property subject to assessment within Reclamation District No. 1000, and the owners and holders of all of the issued and outstanding Refunding Bonds of 1934 of said District." (R. 36, lines 3-9).

This capacity of Petitioner is to be clearly distinguished from *self-constituted* representation, such as may be the case where a public official acting only in the capacity of a *public official* assumes to represent a segment of the general public whose interests *have never previously been placed in his charge* and who are determinable only by the extent to which the general public falls within the orbit of the law which he seeks to challenge. This Court has expressly recognized the right of a representative to protect

the interests of those for whom he is acting when their rights have been expressly entrusted to his care. In *Voeller v. Neilston Warehouse Co.* (1940) 311 U.S. 531; 61 S. Ct. 376; 85 L. Ed. 322, this Court said (p. 537 of 311 U.S.):

> "The constitutional issue is here raised for the majority shareholders by the corporation, which admittedly itself had notice. Exercising the very delicate responsibility of passing upon the validity of state statutes, this Court has many times declared the rule that only those who have been injured as the result of the denial of constitutional rights can invoke our jurisdiction on constitutional questions. Yet here the corporation would have us say that it is sufficiently the representative of the majority to raise in their behalf the constitutional issue, but not sufficiently their representative to receive notice. We hold that, so far as the constitutional requirement of due process is concerned, it is in this case sufficiently their representative for both purposes, and accordingly we find it necessary to reverse the judgment below.
>
> "There is nothing unusual in such a holding; *the rights of parties are habitually protected in court by those who act in a representative capacity; an executor or administrator may act for the beneficiaries of an estate; a receiver may represent the collective interests of stockholders, partners, or creditors; a lawyer may appear for his clients; and a corporation may represent the collective interests of its shareholders.*"

In addition to acting as a public officer to enforce a state statute, the validity of which has been drawn in question, Petitioner was designated by state law as the legal trustee of the bond funds. (*River Farms Co. v. Gibson* (1935)

4 C. A. (2d) 731, 743; 42 P. (2d) 95.) As such trustee, Petitioner's relationship to the bondholders is identical with that of a receiver or conservator charged with the preservation and administration of property for the benefit of the *cestui que trust*. This Court has regularly acknowledged its jurisdiction to review constitutional questions decided by state courts on appeal by such officers.[14]

III.

STATEMENT OF CASE.

The statement of the case appearing in the preceding Petition under Paragraph I (pp. 1 to 10, ante), is incorporated herein and by reference made a part of this Brief.

IV.

SPECIFICATIONS OF ERROR.

1. The District Court of Appeal of the State of California, Third Appellate District (the State Court) erred in holding that an agreement between the District and R.F.C., executed by R.F.C. under Congressional authority and as a condition to a loan of Federal funds, pursuant to which the District was required to establish Reserve Funds for the benefit of its Refunding Bonds of 1934 was a mere *gratuity* and not protected against impairment by the Constitution of the United States.

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[14]Cf. *Clark v. Kansas City* (1899) 176 U.S. 114; 20 S.Ct. 284; 44 L.ed. 392; *Mayor and Aldermen of Vicksburg v. Henson* (1913) 231 U.S. 259; 34 S.Ct. 95; 58 L.ed. 209; *Lusk v. Botkin* (1915) 240 U.S. 236; 36 S.Ct. 263; 60 L.ed. 621.

2. The State Court erred in holding that the contract expressed in the District's Refunding Bonds of 1934 at the time of their issuance did not include the obligation of the District to maintain Reserve Funds as security for payments of principal and interest on the Refunding Bonds of 1934 for the benefit of the holders thereof so long as the Refunding Bonds of 1934 remained outstanding and unpaid.

3. The State Court erred in holding that the contract expressed in the District's Refunding Bonds of 1934 at the time of their issuance, was not impaired by the resolution of September 26, 1946 (R. 87) enacted subsequent to the issuance of the bonds which dissolved the Reserve Funds created as security for the Refunding Bonds of 1934.

4. The State Court erred in ordering the issuance of a writ of mandate requiring Petitioner to dissolve the Reserve Funds, in that in so doing, it gave effect to and enforced a subsequent law of the State of California impairing the obligation of the contract expressed in the Refunding Bonds of 1934 of the District in violation of Section 10 of Article I of the Constitution of the United States.

5. The State Court erred in holding and deciding that there was ample security for the Refunding Bonds of 1934 notwithstanding the impairment of the obligation of the bond contract effected by said resolution of September 26, 1946 (R. 87), and further erred in holding that the rights of the bondholders would not be infringed by the dissipation of Reserve Fund moneys in direct violation of the obligation of the bond contract.

6. The State Court erred in holding that it was to the interest of the landowners that the Reserve Fund moneys be used to pay accruing principal and interest on the bonds and that the landowners, by the dissipation of the Reserve Fund moneys, be relieved from their obligation to meet assessments to be called for such payments, and further erred in giving effect to a subsequent law of the state under which the Reserve Funds were to be dissipated in violation of Section 10 of Article I of the Constitution of the United States.

V.

ARGUMENT.

Summary of the Argument.

THIS CONTROVERSY TRANSCENDS THE MERE VINDICATION OF PRIVATE RIGHTS, FOR ALTHOUGH SUCH RIGHTS ARE UNQUESTIONABLY INVOLVED, THE QUESTIONS THAT MUST BE ANSWERED DIRECTLY AFFECT THE FISCAL RELATIONSHIP BETWEEN THE FEDERAL GOVERNMENT AND THE RESPECTIVE STATES AND THE PUBLIC AGENCIES AND SUBDIVISIONS THEREOF WHICH HAVE DEPENDED AND WILL CONTINUE TO DEPEND UPON EFFECTIVE FEDERAL FINANCIAL AID THROUGH R. F. C. AND OTHER FEDERAL LENDING AGENCIES.

A.

A VALID AGREEMENT ENTERED INTO BETWEEN A FEDERAL LENDING AGENCY (R.F.C.) AND A STATE AGENCY (THE DISTRICT) FOR THE BENEFIT OF THE HOLDERS OF BONDS ISSUED BY THE STATE AGENCY TO THE FEDERAL AGENCY MUST BE ENFORCEABLE BY OR ON BEHALF OF EACH SUBSEQUENT HOLDER OF THE BONDS IN ORDER TO GIVE EFFECT TO AND CARRY OUT THE PURPOSE AND INTENDMENT OF THE FEDERAL LEGISLATION UNDER WHICH THE ORIGINAL LOANS WERE MADE.

Inherent in this controversy is the important question of the fiscal relationship between State and Federal Governments which is involved. *United States v. Texas* (1941) 314 U.S. 480; 62 S. Ct. 350; 86 L. ed. 356.

The Federal statutes governing the lending operations of R.F.C. constitute the master pattern of Federal financing of public bodies of the several states (15 U.S.C. 1946 Ed. Sec. 601, et seq.). Essentially such *loans* must be self-liquidating. Accordingly, the securities issued by borrowing bodies must be readily marketable in order that they may be resold by the R.F.C., thereby reimbursing the Federal Treasury for the Federal funds advanced. To

this end R.F.C. adopted specific requirements relating to the nature of the securities it would accept to evidence its loans (R. 6-7). The fundamental requirement was that all refinancing obligations should be *"fully and adequately secured."* (15 U.S.C. 1946 Ed. Section 605.) The terms and conditions upon which the Refunding Bonds of the District were to be issued to R.F.C. are set forth in R.F.C.'s Standard Requirements (R. 37-51). These terms were essentially as follows:

(a) *Principal Amount*—not to exceed $1,609,000 (R. 38).

(b) *Rate of Interest*—not to exceed four (4) per cent per annum (R. 41).

(c) *Maturities*—maturing over a period of thirty (30) years, commencing at the end of the fourth year from their date in accordance with a maturity schedule satisfactory to R.F.C. (R. 43).

(d) *Reserve Funds*—to be established in an amount prescribed by R.F.C. (R. 7) for the payment of principal and interest on the Refunding Bonds during bad years (R. 45).

In fact R.F.C. would not make any loan until the District had entered into a satisfactory contract agreeing to these conditions *"so long as any of the New Bonds • • • remain outstanding"* (R. 43).

In general, the basis of any marketable security comprehends all of the foregoing elements, namely, the total amount of the issue, the rate of interest, the dates of maturity and adequate security in the form of reserve funds, sinking funds or other special funds by whatever name they may be called, to insure payment of principal

and interest during bad years when normal revenues might be insufficient for bond service requirements. The District in this case accepted the terms of the R.F.C. refinancing agreement, issued and delivered its bonds to R.F.C. in strict accordance with those terms and maintained the Reserve Funds intact until long after R.F.C. was able to sell and dispose of the bonds in the open market to bona fide purchasers for value. The State Court held that the contract expressed in the bonds included every term outlined above, *except* the security feature, namely, the Reserve Fund requirement. In so holding it has given effect to a state law which impairs the obligation of the bond contract. If its decision is permitted to stand it will serve as a precedent for other courts, both in this state where similar financing has been prevalent and throughout the nation, *by virtue of the fact that it is the first and only reported decision of any court, state or federal, bearing on the question of whether obligations issued under Federal refinancing programs will, upon their resale by the Federal government, pass into the market with all of the security of their original issuance as required by the Federal laws.*

R.F.C., as the principal disbursing agent of the Federal Government, in putting into execution the various programs and policies of the Congress relating to Federal financial aid in the interests of the general welfare of the Nation has from its organization on February 2, 1932 through June 30, 1947, made total disbursements amounting to $31,255,115,288.08.[15] Of this total of disbursements, $101,425,083.31[15] alone represents over six hundred separate loans to drainage, levy, irrigation, reclamation and

other districts similar to Reclamation District No. 1000. As of June 30, 1947, R.F.C. still held for resale to the public in excess of seventeen million dollars[15] principal amount of obligations of such districts evidencing such loans.

Under Section 4(a)(3) of the Reconstruction Finance Corporation Act (15 U.S.C. 1946 Ed. Sec. 604) as amended by Public Law 548, Chapter 334, 80th Congress (U.S.C. Congressional Service 1948, No. 5) R.F.C. is further authorized until June 30, 1954 to make loans and to purchase securities of states, municipalities, and political subdivisions of states to aid in the financing and construction of projects authorized by the laws of any of such bodies, not to exceed an aggregate of $200,000,000.00 outstanding at any one time. In "The Bond Buyer", an investment news organ of national circulation among banks and investment and securities institutions, the following item appears on page 2 of the edition of August 28, 1948:

> "Washington, D. C., Aug. 27.—The Reconstruction Finance Corporation is receiving more than the average number of applications from cities (and to some extent States) for assistance in their public works planning. In most instances, the discussion periods are extended over weeks, with conferences at the R.F.C. regional offices, conferences with R.F.C. officials at headquarters. These are interspersed with officials of the municipalities, since bond issues, including special offerings are involved. Much of the talk—the consultation—are looking to a potential application for R.F.C. aid in the construction of new facilities.
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[15]Reconstruction Finance Corporation, quarterly report to the Congress as of June 30, 1947 pursuant to Section 15 of the Reconstruction Finance Corporation Act, as amended.

The Reconstruction Finance Corporation can make maximum loans up to a total of $200,000,000 for construction purposes under its public works allocations. Generally, that is most frequently, the R.F.C. takes a complete issue of public revenue bonds, advances the funds, holds the bonds for a time and then sells them. According to R.F.C. sources, there is generally a profit in the transaction. There are some instances, however, in which the R.F.C. has had losses. These are said to be mostly in cases of small municipalities where some unforeseen circumstances developed and the communities were unable to meet interest payments."

It is a fair statement that the important questions presented in this controversy do not relate solely to past transactions but may be presented again and again in connection with the future lending operations of R.F.C. In view of the past and probable future extent of this one phase of the self-liquidating loan program of the Federal Government,[16] it is manifest that the only Appellate

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[16]In "The Bond Buyer", September 18, 1948 (p. 2) appears the following:

"There is growing interest and some concern over what the Hoover Commission will do as concerns the lending agencies of the Government. Another concern is Federal-State relationships. The Commission now has before it preliminary drafts of the findings of their staff experts who have been studying the complicated Federal setup. Another report is the Post Office Department. Within 10 days after the 81st Congress meets, the Commission, headed by former President Herbert Hoover, must report to Congress on the streamlining of an estimated 2,300 units of Government.

* * *

Revision and reorganization of the Federal lending agencies will have a direct interest to those concerned with support, purchase and issuance of public revenue bonds. It is believed here that the Reconstruction Finance Corporation will be the chief agency around which other lending agencies will be grouped. If this finally works out, the RFC will probably be the one

Court decision raising the Federal question of the enforceability by private investors of the terms of bond contracts created pursuant to a loan agreement between the Federal Government and state agencies, *upon which the very success or failure of the self-liquidating feature of the loan depends,* ought to be reviewed by this Court and, if erroneous, corrected by the final decision of this Court.

B.

THE DECISION OF THE STATE COURT IN EFFECT NULLIFIES THE PURPOSE AND INTENT OF FEDERAL LEGISLATION DESIGNED TO FURNISH FINANCIAL AID TO THE STATES AND POLITICAL SUBDIVISIONS AND PUBLIC AGENCIES THEREOF BY CASTING A CLOUD UPON THE STATUS OF SECURITIES NOW HELD BY R.F.C., AS WELL AS ON THE FINANCING AND REFINANCING OF STATE AGENCIES BY FEDERAL LENDING AGENCIES DESIGNED TO PROMOTE THE GENERAL WELFARE.

R.F.C. alone, as of March, 1948, held for resale to private investors more than seventeen million dollars[17] principal amount of securities evidencing loans to various states, political subdivisions and other public bodies throughout the country. In addition to R.F.C., Congress has in the past created various other Federal lending agencies empowered to effect loans to states and political subdivisions and public agencies thereof through the purchase of the obligations of such bodies, pursuant to loan agreements in substance the same as that entered into between the District and R.F.C., including the Public

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Washington agency dominating the Federal side of these bonds issued as aids to cities, States, Bridge Commissions and others."

[17] "Municipal Bonds and Other Securities Available for Sale" (R.F.C. Wash. D.C., March, 1948).

Works Administration (Act of June 16, 1933, c. 90, Title 2, 48 Stat. 200, 40 U.S.C. Sec. 401, et seq.), the United States Housing Authority (Act of September 1, 1937, c. 896, 50 Stat. 888, 42 U.S.C. Sec. 1401, et seq.), the Rural Electrification Administration (Act of May 20, 1936, c. 432, 49 Stat. 1363, 7 U.S.C. Sec. 901, et seq.), and the lending authority granted to the Federal Works Administrator under the Water Pollution Control Act recently passed by the 80th Congress (Public Law 845, Chapter 758, approved June 30, 1948, U.S.C. Congressional Service 1948, No. 7). Securities evidencing loans in the aggregate principal amount of $694,744,787.58[18] were purchased by R.F.C. from the time of its original organization to June 30, 1947, from the Public Works Administration, and, as of June 30, 1947, $67,293,898.35[18] principal amount of such securities were held by R.F.C. for resale to the public.

The District in this case faithfully performed its contract as long as the bonds were held by R.F.C., but subsequent legislation sustained by the State Court effectively released the District from one of its solemn and basically essential obligations as soon as the bonds had passed into the hands of private investors. If this decision is permitted to stand uncorrected, the question of past and future Federal loans will be directly affected. *First:* No private investor will be willing to purchase obligations hereafter issued, evidencing loans from R.F.C. and other Federal lending agencies, if it is uncertain whether or not the bond contract is something other than that origi-

[18]Reconstruction Finance Corporation Quarterly Report to the Congress, as of June 30, 1947, pursuant to Section 15 of the Reconstruction Finance Corporation Act, as amended.

nally entered into between the borrower and the Federal agency. *Second:* The ability of R.F.C. and other Federal lending agencies to market securities now held by them will be seriously hindered, thereby impairing the successful liquidation of Federal loans and the reimbursement of the Federal Treasury of moneys heretofore advanced to state agencies.

The problem of disposing in the open market of securities of the kind and character here involved is not a mere theoretical question. The problem exists now. In "The Bond Buyer" of September 11, 1948 (p. 2), appears the following item:

> "It would surprise no one here if the next Congress decided to look carefully into the portfolios of the Reconstruction Finance Corporation, especially their holdings of municipal and public revenue bonds. During hearings before the House Banking Committee, legislators indicated considerable interest in the shelf of RFC holdings of such securities. It was House Banking Committee Chairman Wolcott, Republican of Michigan, that advised the RFC to do its best to get rid of its holdings. Rep. Wolcott is expected to be Chairman of this Committee next year (unless the Republicans lose the House) and is apt to want to know what progress the RFC had made to this end. As earlier reported, the RFC is not moving its 'stock' of these securities very fast. It is said not to be refusing any good bids but, on the other hand, offering no special bargains.
>
> "The Marketing and Liquidation Committee of the RFC is anxious to send out its 16-page booklet of issues to anyone that might be a buyer. The list of public revenue bonds is divided by States with the name of the issuer and a brief description of the

issue, with maturity given and the amount held. Interest rates generally, with few exceptions, are at 4%. Upon request the RFC will supply a detailed description of the issue and, if available in the case of revenue bonds, a summary of the revenue and expense figures submitted by the issuer, also a photostatic copy of the bond transcript, but at the expense of the maker of the request. The RFC will grant no options and only firm, unconditional bids will be considered."

The present decision of the California District Court of Appeal, if erroneous, can only aggravate this problem which directly affects the fiscal relationship, both present and future, between the States and the Federal Government. Therefore, it is in the national interest that this decision be reviewed by this Court and reversed by this Court if it finds that a violation of Section 10 of Article I of the Constitution of the United States has been sanctioned.

C.

STATE COURTS SHOULD NOT BE PERMITTED, BY THE SIMPLE DEVICE OF DENYING THE EXISTENCE OF A VALID CONTRACT BETWEEN A FEDERAL AND A STATE AGENCY FOR THE BENEFIT OF THE HOLDERS OF BONDS OF THE STATE AGENCY, TO SANCTION THE IMPAIRMENT OF THE OBLIGATION OF THE BOND CONTRACT IN VIOLATION OF ARTICLE I, SECTION 10 OF THE CONSTITUTION OF THE UNITED STATES, AND CAREFUL SURVEILLANCE BY THE COURT OUGHT TO BE EXERCISED TO PROTECT THE CONSTITUTIONAL GUARANTEE IN A CONTROVERSY WHEREIN THE FEDERAL QUESTION RAISED IS OF VITAL IMPORTANCE TO BOTH THE FEDERAL AND STATE GOVERNMENTS.

The effectiveness of both present and future Federal financing of the respective States and their public agen-

cies depends, to a material extent, upon the ability of the Federal lending agencies to liquidate the obligations evidencing their loans, by sale in the open market to private investors. The ability of Federal lending agencies to dispose of such obligations in the open market depends in turn upon the reliance that may be placed upon the contract expressed in the obligations by the investing public.

The issues involved in this controversy, therefore, are not limited merely to the vindication of private rights but are a prototype of the questions inherent in each of the many loans which R.F.C. and other Federal lending agencies have made and will make on terms essentially identical with the loan made to Reclamation District No. 1000. The questions that Petitioner seeks to present for this Court's decision involve not only the ability of R.F.C. and other Federal lending agencies to dispose of refunding and other refinancing obligations presently held by them, as intended by the Federal laws of their creation, but the extent and financial success of future public financing by Federal lending agencies. The extent to which private investors will be protected in the purchase of securities of state agencies from R.F.C. and other Federal lending agencies is therefore a substantial Federal question.

Careful surveillance by this Court ought to be exercised to protect the Constitutional guarantee in a controversy wherein the Federal question raised is of such importance both to the Federal and the State governments. State courts should not be permitted, by the simple device of denying the existence of a valid contract arising under a loan agreement between a Federal and State agency, to sanction a violation of Section 10 of Article I of the Constitution of the United States. We submit

that the decision of the State Court will in effect hinder and impede the purposes and policies of Federal legislation enacted for the general welfare of the Nation, and that a final decision of this Court is urgently needed.

CONCLUSION.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers by granting the writ of certiorari and thereafter reviewing and reversing the decision of the District Court of Appeal of the State of California, Third Appellate District.

Dated, San Francisco, California,
October 4, 1948.

Respectfully submitted,

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(Appendices A, B and C Follow.)

Appendix A

POLITICAL CODE SECTION 3480e.

§3480e. Refunding bonds and reserve fund pursuant to agreement with United States: Creation and use of fund: Investment: Call of assessment to restore fund when depleted. (1) Whenever (a) an agreement shall have been, or shall hereafter be, entered into between any reclamation district of this State and the United States of America, or any department or agency thereof, for the refunding of bonds of such district, which agreement shall provide for the issuance of refunding bonds of such district aggregating in principal amount a sum less than the principal amount of the bonds to be so refunded and for the creation of a reserve fund for the purpose of paying installments of principal or interest of such refunding bonds whenever, by reason of delinquencies in the payment of calls or otherwise, the amount in the bond fund is insufficient to pay such installments, and (b) the unpaid principal amount of the assessment or assessments securing the outstanding bonds to be refunded is, or upon the carrying out of the plan for refunding provided in such agreement will be, in excess of the principal amount of the bonds secured by such assessment or assessments and then outstanding (including any bonds authorized to be issued and based upon such assessment or assessments but not yet issued), the board of trustees may by resolution declare that such excess (or part thereof) of the assessment or assessments shall be called from time to time for the purpose of creating a reserve fund. The moneys in such reserve fund shall be used for the purpose of paying installments of principal and interest, or either thereof,

of any outstanding bonds secured by such assessment or assessments, whenever by reason of delinquencies in the payment of calls or otherwise the amount in the bond fund shall be insufficient to meet such installments of principal and interest, or either thereof, on any January 1st or July 1st, as the case may be. If there shall be on hand in the bond fund a sum derived from an assessment or assessments upon which said bonds so to be refunded pursuant to such agreement have been issued by such district, which sum is in excess of the amount required for the payment of all installments of principal and interest due or to become due within six months upon all bonds secured by such assessment or assessments and then outstanding, the board of trustees may by resolution direct that such excess of the bond fund, or such part thereof as they shall deem advisable, be set apart for the purpose of creating a reserve fund for the purposes above stated. No reserve fund shall be created under this section unless the unpaid principal amount of the assessment or assessments securing the bonds to be refunded pursuant to such agreement is or will, upon the carrying out of the plan of refunding in such agreement, be in excess of the principal amount of all bonds secured by such assessment or assessments and then outstanding (including any bonds authorized but not yet issued); and no call for the purpose of creating such reserve fund shall be made until after the United States, or department or agency thereof, shall have accepted not less than fifty (50) per cent of the refunding bonds proposed to be issued under such plan.

The county treasurer shall be authorized to invest any moneys in the reserve fund in bonds of the United States or of the State of California. Any bonds thus purchased

and held in such reserve fund may from time to time be sold by the county treasurer and the proceeds temporarily reinvested in bonds as above provided. Sales of any bonds thus purchased and held in the reserve fund shall from time to time be made by the county treasurer in season so that the proceeds may be applied to the purposes for which the reserve fund was created.

(2) Whenever the reserve fund in this section above referred to shall be depleted in whole or in part by reason of payments made therefrom as herein provided, the county treasurer shall call such part of the principal of such assessment or assessments, (not exceeding, however, the amount by which the unpaid principal amount of such assessment or assessments shall be in excess of the principal amount of bonds secured thereby) as may be necessary in order to restore such depletion. Such call shall be made at the time prescribed by section 3480 for making the next call for the payment of principal or interest of said bonds after the reserve fund shall have been so depleted; provided, however, that the board of trustees may, in their discretion, direct that such restoration be effected over a period of not exceeding three (3) years next after the reserve fund shall have been so depleted, in which case not less than one-third of the amount of such depletion shall be restored during each of such three (3) years. [Added by Stats. 1937, ch. 478.]

Appendix B

RESOLUTION OF THE BOARD OF TRUSTEES OF RECLAMATION DISTRICT NO. 1000 ADOPTED JULY 8, 1937.

1. Be It Resolved and Ordered that, pursuant to authority conferred by Sections 3480e and 3480f of the Political Code of the State of California, there is hereby created in the office of the County Treasurer of the County of Sacramento, State of California, two reserve funds to be known and designated, respectively, as follows, to-wit:

(a) "Reclamation District No. 1000 Refunding Bonds of 1934—First Division Reserve Fund",

(b) "Reclamation District No. 1000 Refunding Bonds of 1934—Second Division Reserve Fund";

and that the said County Treasurer be, and he is hereby authorized, empowered and directed to establish said funds by transferring from the "First Assessment Bond Fund" of this District to the said "First Division Reserve Fund", the sum of Thirty-Two Thousand Eight Hundred Twenty-Nine and 16/100 Dollars ($32,829.16), and from the "Second Assessment Bond Fund" of this District to said "Second Division Reserve Fund", the sum of Nineteen Thousand Sixty-Three and 10/100 Dollars ($19,063.10).

2. Be It Further Resolved and Ordered that the said Treasurer of the County of Sacramento be, and he is hereby authorized, empowered and directed to pay unto The Capital National Bank of Sacramento to reimburse said Bank for sums expended in payment of balance due on certain outstanding bonds of this District, as follows, to-wit:

(a) Out of said First Reserve Fund....$13,329.16
(b) Out of said Second Reserve Fund.. 6,893.10

Total $20,222.26

said bonds upon which said balance was paid, being Bonds dated January 1, 1913, numbered 4050, 4383 to 4389, inclusive, 5987 to 5992, inclusive, 5994, 5995, M-211, R301 to R305, inclusive, R420 to R429, inclusive, and R444 to R446, inclusive, and bonds dated July 1, 1917, numbered 6707 to 6711, inclusive, and 6994 to 7003, inclusive, and said bonds, and each and every thereof having been cancelled and burned following such payment on June 28, 1937, in the Federal Reserve Bank of San Francisco, in the presence of C. A. Kitchen, Deputy County Treasurer of Sacramento County, D. B. Atkins, representing said Federal Reserve Bank of San Francisco, and C. F. Metteer, Secretary of this District;

3. Be It Further Resolved and Ordered, that the said County Treasurer of the County of Sacramento, State of California, be, and he is hereby authorized, empowered and directed to maintain in said respective reserve funds at all times, so long as any of said "Refunding Bonds of 1934" shall remain outstanding and unpaid, an amount in cash, or in principal amount of bonds of the United States or of the State of California, the aggregate principal amount of which shall be a sum not less than the amount of the next ensuing maturities of principal and interest payable pursuant to the terms of said "Refunding Bonds of 1934—First Division", and "Refunding Bonds of 1934—Second Division", respectively, and if, at any time, said reserve funds, or either thereof, shall become

depleted in whole or in part, and other funds are not available in District's respective bond funds with which to replenish such reserve funds, as hereinafter provided, then the said County Treasurer shall call such part of the principal of such assessment or assessments, or of any interest accrued thereon, (not exceeding, however, the amount by which the unpaid principal amount of such assessment or assessments shall be in excess of the principal amount of the bonds secured thereby) as may be necessary in order to restore such depletion;

4. Be It Further Resolved that if, at any time, said "First Division Reserve Fund" shall become depleted and there are at the time funds available over and above the amount of the next maturing installments of principal and interest payable therefrom, in the "First Assessment Bond Fund" of this District, with which to replenish it, the said County Treasurer of the County of Sacrament be, and he is hereby authorized, empowered and directed to transfer from said "First Assessment Bond Fund" to said "First Division Reserve Fund" such sum as shall be necessary to replenish said reserve fund, and that if, at any time, said "Second Division Reserve Fund" shall become depleted and there are at the time funds available over and above the amount of the next maturing installments of principal and interest payable therefrom, in the "Second Assessment Bond Fund" of this District with which to replenish it, the said County Treasurer of the County of Sacramento be, and he is hereby authorized, empowered and directed to transfer from said "Second Assessment Bond Fund" to said "Second Divi-

sion Reserve Fund" such sum as shall be necessary to replenish said reserve fund;

5. Be It Further Resolved, that if and when, by reason of delinquencies in the payment of calls or otherwise, the amount of money in the respective bond funds of the District shall be insufficient to meet any matured installment of principal and interest of said bonds, then the County Treasurer of the County of Sacramento, State of California, be and he is hereby authorized, empowered and directed to use moneys in the respective reserve funds to meet such matured installments;

6. Be It Further Resolved that the said County Treasurer be, and he is hereby authorized, empowered and directed to invest available funds on deposit in the said reserve funds, or either thereof, from time to time as opportunity presents, in bonds of the United States of America or of the State of California, and to hold any bonds so acquired as a reserve in the fund out of which the same were acquired; Provided, However, that the said County Treasurer may, from time to time, sell any bonds so held by him in said reserve funds, or either thereof, and reinvest the proceeds of any such sale or sales in other bonds of the United States of America or of the State of California for the purposes of said respective reserve funds;

7. Be It Further Resolved, that the County Treasurer of the County of Sacramento be, and he is hereby authorized, empowered and directed to maintain in said respective reserve funds at all times so long as any of said "Refunding Bonds of 1934" shall be outstanding and unpaid, an amount in cash or in principal amount of bonds

of the United States of America or of the State of California, the aggregate principal amount of which shall be a sum of not less than the amount of the next ensuing maturities of principal and interest payable under the terms of said "Refunding Bonds of 1934—First Division" and "Refunding Bonds of 1934—Second Division", respectively, and, if at any time said reserve funds, or either thereof, shall become depleted in whole or in part by reason of payments made therefrom, and other funds are not available in this District's respective bond funds with which to replenish such reserve funds, as hereinabove in paragraph 4 provided, then the said County Treasurer shall call such part of the principal of such assessment or assessments, (not exceeding, however, the amount by which the unpaid principal amount of such assessment or assessments shall be in excess of the principal amount of bonds secured thereby) as may be necessary in order to restore such depletion.

(Adopted July 8, 1937)

Appendix C

RESOLUTION OF THE BOARD OF TRUSTEES OF RECLAMATION DISTRICT NO. 1000 ADOPTED SEPTEMBER 26TH, 1946.

Whereas, on May 21, 1945, acting pursuant to instructions received by it from Reconstruction Finance Corporation the Federal Reserve Bank of San Francisco transmitted to this District, its check No. 1,179,876 in the amount of $55,662.22 drawn on the Treasurer of the United States and made payable to Reclamation District No. 1000, a copy of said letter of transmittal reading as follows:

"Mr. C. F. Metteer, Secretary
Reclamation District No. 1000
Sacramento, California

Dear Sir:

In accordance with instructions received from the Treasurer of the Reconstruction Finance Corporation there is enclosed check No. 1,179,876 in the amount of $55,662.22, drawn on the Treasurer of the United States payable to Reclamation District No. 1000.

The above check represents repayment of $50,000.00 held in Suspended Credits, $15,000.00 being deposited November 28, 1939 and $35,000.00 deposited July 2, 1943, and interest on these funds at 4% in the amount of $5,662.22 from those dates to April 3, 1945, the date bonds in the amount of $1,357,000.00 were sold.

Yours very truly,
Merritt Sherman
Assistant Cashier"

And Whereas said check so transmitted was in repayment of the following items, theretofore deposited by the County Treasurer of Sacramento County "as Trustee of this District", with said Federal Reserve Bank, as follows, to-wit:

(1) First Division Reserve Fund, theretofore transferred from the Bond Fund of this District to said Bank to be held as such reserve pursuant to Section 3480f* of the Political Code, and to sub. (k) of paragraph 8 of the Resolution of Reconstruction Finance Corporation granting a loan to this District as adopted May 7, 1934 (See 1934 MB, pages 172-81)	$30,000.00
(2) Second Division Reserve Fund, theretofore transferred from the Bond Fund of this District to said Bank to be held as such reserve pursuant to said Section 3480f, and to said sub. (k) of paragraph 8 of said Resolution of Reconstruction Finance Corporation granting a loan to this District, as adopted May 7, 1934	$20,000.00
(3) Interest accrued, and previously unpaid on said reserve funds, to April 3, 1945	$ 5,662.22
Total	$55,662.22

And Whereas, at the time of depositing said sum with the County Treasurer of Sacramento County on May 24, 1945, the Secretary of said Reclamation District No. 1000 directed said Treasurer to allocate the said amount to accounts of said District in his office, as follows, to-wit:

*California Political Code Section 3480f, which authorized the deposit of Reserve Fund moneys with the Federal Reserve Bank of San Francisco is reprinted in the record (R. 67-68).

1st Division Reserve Fund,	$30,000.00
2nd Division Reserve Fund,	20,000.00
1st Division Bond Fund,	3,397.33
2nd Division Bond Fund,	2,264,89
Total	$55,662.22

and further instructed said Treasurer, by letter dated May 24, 1945, as follows, to-wit:

> "The ultimate disposition of this reserve fund now lies with the Board of Trustees of the District. The fund having been properly dissolved at the Federal Reserve Bank it became necessary under the provisions of Section 3480 (f) Sub. B of the Political Code that the fund be repaid to the Treasurer of the Reclamation District for the 'purposes' and 'uses' of the District, such as may be from time to time declared by the Board of Trustees of the District."

And Whereas, by transferring at this time from said respective reserve funds to said respective bond funds, amounts as follows, to-wit:

First Division Reserve to First Division Bond Fund, the sum of	$ 4,418.29
Second Division Reserve to Second Division Bond Fund, the sum of	10,417.13

there will be in said respective Bond Funds, amounts sufficient to pay the maturities accruing on said respective outstanding bonds on the first day of January, 1947.

Now, Therefore, It Is Hereby Resolved and Ordered by the Board of Trustees of Reclamation District No. 1000, acting pursuant to authority conferred on said Board by Section 3480f of the Political Code and by other

provisions of Law, in meeting regularly convened and held in the office of said District on Thursday, the 26th day of September, 1946, that Ray G. Houston, as County Treasurer of Sacramento County, State of California, and as Trustee of this District pursuant to said Section 3480 of the Political Code, be and he is hereby authorized, empowered and directed to transfer from the respective Reserve Funds of this District to its respective Bond Funds in amounts as follows, to-wit:

(1) From the First Division Reserve Fund to the First Division Bond Fund, the sum of $4,418.29, leaving a balance remaining in said Reserve Fund for the uses and purposes of this District of $48,801.71;

(2) From the Second Division Reserve Fund to the Second Division Bond Fund, the sum of $10,417.13, leaving a balance remaining in said Reserve Fund for the uses and purposes of the District of $10,724.00, which said respective transfers will set up and establish balances in said respective bond funds, amounts, as follows, to-wit:

First Division Bond Fund	$13,320.00
Second Division Bond Fund	$12,170.00

being amounts sufficient to pay in full all sums which will mature and be payable from said funds on the first day of January, 1947, thus obviating the legal necessity or right of making any assessment calls to raise funds to pay interest maturing January 1, 1947, on said Bonds.

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Table of Authorities Cited

Political Code:	Pages
Section 3480 (e)	2, 3, 5, 6, 7
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1948

No. 345

RAY G. HOUSTON, as and constituting the County Treasurer of Sacramento County, State of California, and Ex-officio Trustee of Reclamation District No. 1000,

Petitioner,

vs.

THOMAS MCCORMACK and GEORGE J. MEISTER, and T. B. SILLS, as and constituting the Board of Trustees of Reclamation District No. 1000 (a public corporation),

Respondents.

BRIEF IN ANSWER TO PETITION FOR WRIT OF CERTIORARI to the District Court of Appeal, State of California, Third Appellate District.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

In opposition to the petition for writ of certiorari filed herein Respondents respectfully show:

SUPPLEMENTAL STATEMENT OF CASE.

Petitioner's statement fails to show many matters in the record essential to an intelligent understanding of the case including, among others, the following:

(a) No authority existed under State law to set up a reserve.[1] Therefore, in June of 1937 the District with the approval of the R.F.C. caused Section 3480(e) California Political Code to be enacted.[2] (R. 10-11.) This law, while general in wording, is essentially a special act designed to meet a special situation, i.e. the reserves here set up.

By its express terms the authority for the reserve under Section 3480(e) runs only in favor of the

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[1]See Legislative Declaration of Urgency which is a part of Section 3480(e), California Political Code, but is omitted from Petition Appendix A. Note particularly the portion thereof reading as follows:

> "• • • Reconstruction Finance Corporation frequently requires that districts receiving such grants shall provide and set up reserve funds to insure the prompt payment of principal and interest to accrue under said loans, *and that reclamation districts are not now authorized or empowered to comply with such requirements.*" (Italics ours.)

A full copy of the Declaration of Urgency is attached hereto as Appendix 1.

[2]Reclamation Districts under California law, in contrast with Irrigation Districts and similar agencies, were not authorized to create reserves but were required to levy such additional percentage as might be necessary above principal and interest demands to cover delinquencies. (R. 98.)

R.F.C. or other Federal agency. There is no authority under the act to create the reserve in favor of private persons or agencies. If, for example, the District had been refinanced by private agencies as, say the bond syndicate, which bought the bonds from R.F.C. (R. 16) there would have been no authority under Section 3480(e) to set up a reserve. Except for the Pescadero Reclamation District which was refinanced under a "cumbersome" method of escrowing old bonds (R. 11); (Pet. pp. 6-7), the record shows no refinancing by the R.F.C. of any reclamation district except Reclamation District No. 1000. That district, that section, and this case stand alone.

(b) The refunding bonds which were to go to the R.F.C. were authorized at an election of the landowners on July 19, 1934. (R. 8.) They contained no reference to a reserve fund nor does the resolution providing for their issuance. (R. 52-59 Ex. "C".) The Court below points out that under the State law the landowners' agreement was " 'to pay the assessment in ten equal annual payments with such additional percentage as may be necessary to cover delinquencies. * * * the purchaser of the bonds, based upon the assessment, accepts the bond based upon the premises which we have stated, and his right is to have collected from each landowner the annual percentage of the assessment as specified in the bond—no more and no less.' " (R. 98.)

(c) The refinancing agreement with the R.F.C. (R. 37 Ex. "A") was replete with many collateral covenants obviously personal in nature and which by

no stretch of imagination could "follow the bonds" nor was it contended by Petitioner that they did. Among other covenants was paragraph 8(k) (R. 46), reading as follows:

> "(k) Successor: All resolutions and agreements by the District shall provide that any consents that may be given by and any rights thereby conferred upon this Corporation may be exercised by any successor to this Corporation designated by Act of Congress or by any Department of the United States Government or any corporation wholly owned by it, or by any person holding responsible office under the United States Government that may at any time be designated for that purpose by this Corporation."

(d) No assignment of the right of the R.F.C. in its contract with the District (R. 37, Ex. "A") nor in the reserve fund was asked by the bond purchasers and no assignment was given. (R. 16-17.)

(e) There was also before State Court Section 3480 (f) of the California Political Code as amended in 1939 with the consent and approval of the R.F.C., the then holder of all the refunding bonds. (R. 14.) Copy is attached as Appendix 2. The purpose of the Act was to permit reserve funds to be deposited in the Federal Reserve Bank drawing interest in favor of the District. The amendment provides that no funds may be withdrawn from the Federal Reserve Bank except "for the purpose of paying the principal or interest upon any bonds of said district held by Reconstruction Finance Corporation, or its successors

in interest, or for repayment to the treasurer of said reclamation district for the purposes and uses of said district." Fifty thousand dollars ($50,000.00) were withdrawn from the Federal Reserve Bank when R.F. C. sold the bonds to the bond syndicate. (R. 15.)

(f) The decision of the State Court and the Writ of Mandate issued pursuant thereto did *not* "dissolve" the reserve funds as stated by Petitioner (Pet. p. 2) but directed that the $14,835.42 transferred be used "solely for the purpose of payment of principal and interest" on the refunding bonds. (R. 102, 104, 106.)

ARGUMENT.

1. THE DECISION OF THE STATE COURT IS BASED ON A FINDING THAT THE RESERVE FUNDS WERE NOT A PART OF THE REFUNDING BONDS BUT WERE SET UP IN A COLLATERAL AGREEMENT IN FAVOR OF THE R.F.C. ONLY.

The Court below had before it the contract with the R.F.C. (R. 37 Ex. "A"), the form of bonds authorized at the election in the District (R. 53), the resolution of the District for issuance of the bonds (R. 52, Ex. "C"), the State statute authorizing a reserve to be set up in favor of the R.F.C. to cover this particular case (Section 3480 (e) Political Code); also Section 3480 (f) of the Political Code as amended with the consent of the R.F.C. in 1939; also the many State statutes relating to California reclamation districts and the construction placed on these statutes by the highest courts of the State (See R. 98), also a history of the long and involved dealings between the

District and the R.F.C. from 1937 to 1945 (R. 16) when the bonds were sold to the bond syndicate.[3] The decision decides a very narrow question based on an individual set of facts and the decision should not be disturbed.

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2. THE DECISION OF THE STATE COURT RESTS ON THE CONSTRUCTION OF STATE STATUTES, PARTICULARLY CALIFORNIA POLITICAL CODE SECTION 3480 (e).

Section 3480 (e) is special in nature and the decision of the State Court based on its construction can never serve as a precedent except in the remote possibility that the R.F.C. might in the future refinance a California reclamation district. If for any reason Section 3480 (e) as construed by the State Court were unsatisfactory to the lending agency it would be easy to amend before future refinancing loans were made.[4] At the moment the question is moot.

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3. THE SURPLUS ASSESSMENT IS IN ITSELF AN AMPLE RESERVE.

It is pointed out in the opinion of the Court below that over and above the reserve sought to be maintained by petitioner there is a surplus assessment of $684,844.40 over and above the outstanding bonds which exists by reason of the fact that the old bonds

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[3]The agreed statement of facts is 91 printed pages long.

[4]In the agreed statement of facts (R. 8) it is recited that "substantially all of the bonds held by Reconstruction Finance Corporation and issued to it by various districts of the State of California have been resold by the Reconstruction Finance Corporation * * *"

amounted on their face to $2,268,344.40 while the refunding bonds were issued in the amount of $1,583,500.00 and that this "constitutes ample security far and above the amount of the refunding bonds outstanding". (R. 102.)

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4. **THE DECISION OF THE STATE COURT IS BASED ON AN INDEPENDENT GROUND NOT CHALLENGED IN THE ASSIGNMENT OF ERRORS.**

The decision of the State Court rests on more than one ground. This separate and independent ground is not challenged by petitioner in the assignments of error or otherwise. The Court below points out (R. 104) that the State statutes applicable to the making of calls do not require that calls be made if there is already in the bond fund sufficient to meet such payments; that there is no provision of Section 3480(e) requiring specific amounts to be retained in the reserve fund and concludes:

> "Therefore, even if it were conceded that the bondholders have a right to have reserve funds maintained, it would not follow that their rights would be infringed by the transfer proposed to be made by the trustees."

5. THE PETITION RAISES NO SPECIAL IMPORTANT OR SUBSTANTIAL QUESTION OF LAW NOR WOULD THE DECISION OF THE STATE COURT IF PERMITTED TO STAND "AFFECT THE PHYSICAL RELATIONSHIP BETWEEN THE FEDERAL GOVERNMENT AND THE RESPECTIVE STATES AND THE PUBLIC AGENCIES AND SUBDIVISIONS THEREOF."

Petitioner labors to show that the entire fiscal machinery set up by Congress for lending agencies of the United States will break down if the State decision stands. He argues that the conditions precedent prescribed by Congress to making the loans will be eliminated; that a decision by this Court is necessary in order to "protect and enforce the powers granted by Congress to Federal lending agencies" (Pet. p. 13); that the decision of the State Court "clogs" the re-sale of securities now held by the R.F.C.;[5] that "it will serve as a precedent hindering and impeding the carefully prepared procedure of Federal financing of State agencies" (Pet. p. 20); all past and future loans will be directly affected (Pet. p. 34); the decision of the State Court "nullifies the purpose and intent of Federal legislation designed to furnish financial aid to the States and political subdivisions and public agencies thereof." (Pet. p. 33.) The statements become more extravagant as the brief proceeds.

Of course, petitioners are "champions of no rights but their own" and even assuming that petitioner County Treasurer has a sufficient interest here to champion the asserted rights of the bondholders it can hardly be that he is also champion of the asserted

[5]This in spite of the agreed statement of facts (R. 8), quoted in footnote 4.

rights of the R.F.C. and all other Federal lending agencies.

Passing all this, it is painfully evident that this *case stands alone based as it is on the construction by the State Court of a State statute enacted to meet this precise situation and can never be a precedent for any subsequent decision* let alone the assumption by petitioner that it will upset the entire fiscal machinery of the Federal Government for making loans to promote the general welfare. The statements made by petitioner are so obviously in conflict with the record and the matters hereinbefore set forth that they refute themselves.

It is respectfully submitted the petition for writ of certiorari should be denied.

Dated, Sacramento, California,
October 27, 1948.

STEPHEN W. DOWNEY,
Attorney for Respondents.

Of Counsel,
C. F. METTEER,
DOWNEY, BRAND, SEYMOUR & ROHWER.

(Appendices 1 and 2 Follow.)

Appendix 1

Urgency Clause: Political Code Section 3480(e)

Section 3. This act is hereby declared to be an urgency measure within the meaning of section 1, Article IV of the Constitution of the State of California, and it is deemed necessary for the immediate preservation of the public peace and safety that this law shall go into immediate effect. The following is a statement of facts constituting such necessity:

Due to the agricultural depression which has extended over a period of several years, many landowners within reclamation districts have been unable to meet their installment payments owing under assessments with the result that funds were not provided to meet the maturing interest and principal of the district's bonds. To solve this situation, the Congress of the United States enacted the Emergency Farm Mortgage Act of 1933, as amended, authorizing and empowering the Reconstruction Finance Corporation to grant loans to districts so in distress and many districts in California have secured grants of loans from Reconstruction Finance Corporation pursuant to said act; that before completing said loans, Reconstruction Finance Corporation frequently requires that districts receiving such grants shall provide and set up reserve funds to insure the prompt payment of principal and interest to accrue under said loans, and that reclamation districts are not now authorized or empowered to comply with such requirements. The

Legislature hereby expressly declares that the welfare of the State requires that relief be afforded to the landowners in these districts by permitting reclamation districts to take advantage of the said Emergency Farm Mortgage Act of 1933, as amended, and to conform to the requirements of Reconstruction Finance Corporation in setting up and providing an adequate reserve fund.

Appendix 2

Statutes and Amendments to the Codes, Cal. 1939, Chapter 1027.

Section 1. Section 3480(f) of the Political Code is hereby amended to read as follows:

3480(f). The board of trustees of any reclamation district of this State which has heretofore or which may hereafter enter into an agreement with the United States of America, or any department or agency thereof, pursuant to section 3480(e) of this code, may, by resolution, direct that any money on deposit in the county treasury to the credit of any bond fund or bond reserve fund of the district, which money was derived from an assessment against lands within the district upon the security of which said bonds have been issued, and which is in an amount in excess of that required for the payment of principal and interest then due or to become due within six months thereafter upon bonds secured by such assessment or assessments, be applied to either or both of the following purposes, to-wit:

(a) For the purchase of bonds secured by such assessment or assessments and, in the event of the purchase of any such bonds, the county treasurer shall forthwith cancel the same; provided, however, that no such direction shall be given or application made, unless the unpaid principal amount of the assessment or assessments securing such bonds shall be in excess of the principal amount of bonds secured by such

assessment or assessments and then outstanding (including any bonds authorized but not yet issued).

(b) For deposit with the Federal Reserve Bank in San Francisco, California, subject to withdrawal therefrom only upon written orders of the reclamation district and the United States of America, or the department or agency thereof, including Reconstruction Finance Corporation, interested in the creation and maintenance of said fund, or by said reclamation district by and with the written consent of the United States of America, or the department or agency thereof, including Reconstruction Finance Corporation, interested in the creation and maintenance of said reserve fund; provided, however, that no such funds may be withdrawn from said account with Federal Reserve Bank except for the purpose of paying the principal or interest upon any bonds of said district held by Reconstruction Finance Corporation, or its successors in interest, or for repayment to the treasurer of said reclamation district for the purposes and uses of said district.